

KIAW AIK HANG CO. LTD. v. TAN TIEN CHOY A[C.A. (Wee Chong Jin C.J., Tan Ah Tah & Buttrose JJ.)
July 23, 1963]

[Singapore — Civil Appeal No. 8 of 1962]

Practice and Procedure—Pleadings—Judge deciding on issues not pleaded—New trial.

The plaintiff's case as pleaded was that on June 17, 1960, the defendant sold and delivered a car to the plaintiff for \$9,000. At about the same time the defendant undertook at the direction of the plaintiff to cause the car to be transferred to and registered in the name of the plaintiff or one LBH to whom the car was hired out under a hire-purchase agreement also dated June 17, 1960 between the plaintiff and LBH. The plaintiff delivered the registration card, certificate of insurance and transfer form signed by LBH to enable the defendant to effect registration of the car in the name of LBH. The defendant failed to do so and refused to return the documents to the plaintiff who had so demanded.

LBH having failed to carry out the terms of the hire-purchase agreement, the plaintiff repossessed the car on July 27, 1960. The plaintiff sought a declaration that it was the owner of the car and required delivery up of all documents of title relating to the car.

The defendant in his defence and counterclaim denied all these allegations and alleged that prior to June 17, 1960 he had entered into two hire-purchase agreements on July 2, 1959 and March 9, 1960 respectively with the plaintiff in respect of the same car and all monies due thereunder were fully paid up. He further alleged that on June 17, 1960 he entered in negotiations with LBH for the sale of the car to LBH who in turn sought an advance of \$8,000 from the plaintiff for the purchase of the car. Before the completion of negotiations however a hire-purchase agreement and other documents presented to him by the plaintiff were signed by LBH and countersigned by the defendant as guarantor in anticipation of the successful conclusion of the deal. Negotiations however broke down and the defendant contended that no consideration passed between the plaintiff and LBH during the negotiations, and accordingly the car was still his property. He counterclaimed for the return of the car and damages for its detention.

The plaintiff in reply admitted that all monies under the two hire-purchase agreements with the defendants had been paid in full. This was confirmed by the manager of the plaintiff company in his evidence.

On this evidence the learned trial Judge held that the hire-purchase agreement between the plaintiff and LBH dated June 17, 1960 never came into effect. However, he rejected the defendant's evidence that the balance of the monies due under the hire-purchase agreement of March 9, 1960 had been paid and held that this agreement was still binding as between the plaintiff and the defendant. As the defendant had failed to pay the instalment falling due on July 9, 1960, he held that the plaintiff was entitled to seize the car under that agreement. On appeal,

Held: it was never in issue as to whether the hire-purchase agreement was binding on the parties, it being admitted by them that it had been discharged by payment in full. As the case was decided on issues not raised in the pleadings, the judgment must be set aside and a new trial ordered.

COURT OF APPEAL.

L. A. J. Smith (K. S. Chung with him) for the plaintiff/respondent.

A. J. Braga for the defendant/appellant.

Cur. Adv. Vult.

Buttrose J. (with whom **Wee Chong Jin C.J.** and **Tan Ah Tah J.** concurred): These proceedings are concerned with dealings between the plaintiff, a finance company, and the defendant, a taxi driver, relating to a Holden motor car.

The case as presented by the pleadings was this:— In the statement of claim the plaintiff alleged that on June 17, 1960, the defendant sold and delivered the car to the plaintiff for \$9,000. At or about the time of the sale the defendant undertook at the direction of the plaintiff to cause the car to be transferred to and registered in the name of the plaintiff or one Lim Boon Hin to whom the car was hired out under a hire purchase agreement also dated June 17, 1960, entered into between the plaintiff and Lim Boon Hin subsequent to the sale of the car by the defendant to the plaintiff. The plaintiff delivered to the defendant on June 17, 1960, the registration card, certificate of insurance and transfer form signed by Lim Boon Hin relating to the car to enable the defendant to effect the transfer and registration of it in favour of Lim Boon Hin in pursuance of the defendant's undertaking referred to above. The defendant failed and neglected to do so and refused to return the documents although requested to do so.

Lim Boon Hin having failed to carry out the terms of the hire purchase agreement the plaintiff averred that it became entitled to repossess the car under the agreement and did so on July 27, 1960. The defendant having persisted in his refusal to return the documents or to effect the transfer and registration of the car in the name of the plaintiff as requested the plaintiff sought a declaration that it was the owner of the car and required delivery up to it of all documents of title relating to the car.

In his defence and counterclaim the defendant denied that on June 17, 1960, or at any other time that he sold and delivered the car to the plaintiff for \$9,000. He also denied all the other allegations contained in the statement of claim. He alleged that prior to June 17, 1960, he had entered into certain hire purchase agreements with the plaintiff company in respect of this same car and all monies due to the plaintiff thereon were fully paid up. It appeared that the hire purchase agreements referred to were two in number dated respectively July 2, 1959, and March 9, 1960. He further alleged that on or about June 17, 1960, the defendant entered into negotiations with Lim Boon Hin for the sale of the car to him. Lim Boon Hin in turn entered into negotiations with the plaintiff for an advance of \$8,000 for the purchase of the car. Before completion of negotiations however a hire purchase agreement and other documents presented to him by the plaintiff were signed by Lim Boon Hin and countersigned by the defendant as

guarantor in anticipation of the successful conclusion of the deal. Negotiations however were not completed and ceased and the defendant contended that no consideration passed between the plaintiff and Lim Boon Hin during the negotiations.

The defendant maintained that the car was accordingly his property and the plaintiff had no interest therein and the seizure by the plaintiff was wrongful and he counterclaimed for the return of the car and damages for its detention.

The plaintiff company in its reply admitted that all monies due to it under the two hire purchase agreements entered into with the defendant were fully paid up by him on June 17, 1960, on which day the defendant sold and delivered the car to the plaintiff.

The substantial issue raised by these pleadings was as to whether there was a valid and *bona fide* sale of the car by the defendant to the plaintiff on June 17, 1960.

Now it is clear on the face of the pleadings as they stand that all monies due to the plaintiff on the two hire purchase agreements entered into with the defendant to which I have referred relating to the car were fully paid up. The plaintiff company in its reply admits this. The manager of the plaintiff company in his evidence admits that the balance of payments due under the agreements was paid on June 17, 1960, and this was confirmed and corroborated by the evidence of an employee of the plaintiff who was actively concerned in this transaction. Yet in the face of this evidence and these admissions the learned trial Judge, to quote his own words, said,

"I do not accept the defendants evidence that on June 17, 1960 he paid off the balance payable under the second hire purchase agreement. He impressed me as a dishonest witness. And considering that on March 9, 1960, he was in need of money and unable to pay the ninth instalment, I do not think he was in a position to pay \$6,052 on June 17, 1960."

The second hire purchase agreement was dated March 9, 1960, to which reference has already been made.

Now the facts as found by the learned trial Judge not to be in dispute are as follows:—

On June 2, 1959, the plaintiffs, as owners of the car, entered into a hire purchase agreement with the defendant, whereby the defendant agreed to take the car on hire from the plaintiffs. The agreed cash price being \$8,711.50 and the agreed hire purchase price being \$10,153.50. On the same day, the defendant paid the agreed sum of \$1,711.50 for the option to purchase and subsequently he paid eight monthly instalments of \$469 each.

On March 9, 1960, being in need of money and unable to pay the ninth instalment, the defendant sold the car to the plaintiff for

A \$8,000 out of which the plaintiffs deducted \$4,690 for the ten remaining instalments under the agreement and allowed him a rebate. The plaintiffs, as owners of the car, then entered into a second hire purchase agreement with the defendant. The sum of \$1,000 payable on execution of the second hire purchase agreement for the option to purchase was also deducted from the \$8,000 and the balance of \$2,310 together with the amount of the rebate was paid to the defendant. Under the second agreement the agreed cash price was \$8,000 and the agreed hire purchase price was \$9,568 and the defendant agreed to pay the balance of \$8,568 by eighteen monthly instalment of \$476 each.

There was the further transaction between the parties relating to the car on June 17, 1960, with which the pleadings are particularly concerned and to which I have already referred and as to which there is a dispute.

D As to this transaction the learned trial Judge said —

"It seems to me that the plaintiff agreed to buy the car from the defendant for \$9,000 on June 17, 1960. And having regard to what happened on March 9, 1960, I think it was intended by the parties that the plaintiff should deduct out of the \$9,000 the sum of \$7,180, which was the balance payable under the second hire purchase agreement, less a rebate of \$1,128. The plaintiff signed a form acknowledging receipt of the sum of \$6,062 from the defendant. They also signed another form acknowledging receipt of the sum of \$1,000 from Lim Boon Hin. This sum was payable by Lim Boon Hin on the execution of the third hire purchase agreement for the option to purchase. As this sum was not in fact paid by Lim Boon Hin, it seems to me that the parties intended that this sum should also be deducted out of the \$9,000. In my opinion the refusal of the defendant to pay to Chong Kong Wee any "football money" prevented the parties from completing the intended transaction. Although certain documents had been signed, the result, in my judgment, was that the sale of the car which was to provide the money for paying off the balance payable under the second hire purchase agreement did not in fact take place; that both plaintiff and the defendant continued to be bound by the second hire purchase agreement; and that the third hire purchase agreement, although it was signed by Lim Boon Hin and the defendant never came into effect."

H The learned trial Judge went on to say that in his view the hire purchase agreement with Lim Boon Hin never came into effect although duly signed and completed by both parties and guaranteed by the defendant and he held that the hire purchase agreement of March 9, 1960, was still binding on both parties. As the fourth monthly instalment fell due on July 9, 1960, and as the defendant had failed to pay it within seven days according to the learned trial Judge he held that the plaintiff was entitled to seize the car under that agreement which it at no time ever purported to do.

It was never in issue as to whether this hire purchase agreement of March 9, 1960, was binding on the parties. It was admitted on all sides that it had been discharged by payment in full.

While one can appreciate the dilemma in which the learned trial Judge found himself as the result of his findings he has, with the greatest respect, in my opinion, decided the case on issues not raised by the pleadings and against the admissions contained in them and the evidence.

The case, in my view, must be decided on issues raised by the pleadings which bind the parties. If other issues are desired to be raised or come to light during the trial they must be pleaded by way of amendment.

For these reasons alone, in my judgment, this decision cannot be allowed to stand and in the circumstances of this case I have come to the conclusion that in order to do justice between the parties a new trial must be ordered.

As there is to be a new trial the less I say about the evidence the better. Whether or not the learned trial Judge's findings were justified by the evidence is a matter on which I think, I should refrain from expressing any opinion. Although the evidence is not as clear as it might be it is, in my opinion, difficult to escape the conclusion that the alleged sale by the defendant to the plaintiff on June 17, 1960, and the hire purchase agreement between the plaintiff and Lim Boon Hin were all part and parcel of the same transaction.

In view of the course we propose to take the parties will no doubt take the opportunity, if they be so advised, of amending their pleadings so that all the relevant and material issues will be raised and recorded therein.

In my opinion the appeal must be allowed and the judgment of the learned trial Judge set aside. There must be a new trial before another Judge. The appellant must have his costs of this appeal but there will be no order as to costs in the Court below.

Appeal allowed. New trial ordered.

Solicitors: *Hilborne & Chung; A.J. Braga.*

KHOO CHOOI SIM v. THE RADIO & GENERAL TRADING CO. LTD.

[F.C. (Thomson L.P., Barakbah C.J. (Malaya) & Tan Ah Tah J.) December 5, 1963]

[Ipoh — Federal Court Civil Appeal No. 36 of 1963]

Hire-purchase agreement—Default by hirer—New agreements made between hirer and company—Whether new agreements bills of sale.

Bill of Sale—Modification of hire-purchase agreement—Default by hirer on modified agreement—Plea by hirer that modified agreement was a bill of sale—Whether property in goods had passed to hirer under modified agreement—Bill of Sale Ordinance, 1950.

In 1960 the appellant entered into hire-purchase agreements with the respondent company under which certain electrical goods and equipment were taken by her.

A Clause 6 of the agreements stated that the property in the goods would remain with the respondent company but would pass to the appellant when she had paid all the instalments under the agreements. The appellant subsequently defaulted on these agreements and by mutual consent revised agreements were drawn up and signed by the parties in 1962. The respondent company maintained that the new agreements were in effect continuations of the 1960 agreements. The appellant argued that the 1962 agreements were nothing but cloaks to cover licences to seize the goods the property in which had already passed to her and that therefore the documents were bills of sale under the Bill of Sale Ordinance and were void because they were not registered.

B Held: there was nothing in the documents or surrounding circumstances to say that the property in the goods had passed to the appellant under the 1960 agreements and the 1962 agreements were not bills of sale because at the time of the agreements property was vested in the respondents.

C The decision of the learned trial Judge affirmed and the appeal dismissed.

Cases referred to:—

- D (1) *Beckett v. Tower Assets Co. Ltd.*, [1891] 1 Q.B. 1.
(2) *In re Watson* (1890) 25 Q.B.D. 27.
(3) *McEntire v. Crossley Brothers*, [1895] A.C. 457.
(4) *Helby v. Matthews*, [1895] A.C. 471.
(5) *Polsky v. S. & A. Services Ltd.*, [1951] 1 All E.R. 1062.

E In the Court below the following judgment was delivered:

Ali J.: The plaintiff company in this action seeks to recover arrears of rents due under 8 hire purchase agreements entered into with the defendant on July 19, 1962, and also for an order of possession of the goods supplied. All the terms of the agreements were identical in each case and were related to the hiring of certain electrical goods and equipment specified in the schedules thereto. Each agreement was headed "Hire Purchase Agreement" and the opening sentence thereof began with an offer by the hirer to hire the goods specified in the schedule on the terms and conditions stated upon the acceptance of the offer and delivery of the goods by the plaintiff company within 21 days from the date of the offer. In view of the defence raised in this action, it is necessary to refer to some of the clauses in the agreement which would directly or indirectly have some bearing on the issue. Clause 1 provided for:—

(a) The initial payment by the hirer in consideration for the option to purchase and this payment was referred to in the schedule as deposit, and

(b) The amount of monthly rents or instalments payable, the particulars of which were specified in the schedule.

I Clause 2, amongst other things, contained an undertaking by the hirer to pay the rent punctually, and clause 3 was in respect of an undertaking to use the goods skilfully and in a proper manner and not to remove, assign, let on hire or part with the goods without the written consent